

Mind the Gap: New Gender Pay Gap Reporting Regulations are published

Finally, the revised draft legislation that will implement the Gender Pay Gap (GPG) Reporting regime applicable to private sector employers in Great Britain with 250 or more employees has been published. The Government has taken on board concerns raised during the consultation process including in relation to the meaning of 'employee' and 'pay' and the nature of the pay data to be published.

As anticipated in scope employers will have until 4 April 2018 to produce their first GPG Report. Even if preparatory work has already been undertaken, this will have to be revisited in light of the changes to the legislation to ensure that relevant pay and bonus data is taken into account.

Key issues

- Who is caught?
- Who is an employee?
- What pay data is covered?
- Narrative
- Where does the data have to be published?
- Consequences of non compliance
- Guidance

Key aspects of the finalised regime are as follows:

- The first Gender Pay Gap Reports (GPG Reports) must be published on/before 4 April 2018 based on a snapshot of pay data on 5 April 2017
- Employers with at least 250 employees will be required to publish pay information on the difference between mean and median hourly pay of male and female employees
- GPG Reports must detail how many male and female employees appear in each quartile of pay distribution
- The GPG Report must separately detail the differences between the mean and median bonuses paid to men and women in the 12-month period
- The GPG Report information must be published every year on a searchable UK website that is accessible by the public and employees
- The Government must be separately notified of compliance by uploading the relevant information to a Government sponsored website

Who is caught?

Initially only private sector employers in Great Britain with 250 or more relevant employees will be subject to the new gender pay gap reporting regime, however, the Government will

review the position after five years to determine whether other employers should be brought in scope.

Each qualifying employer within a group will have to produce an individual GPG Report rather than

data being aggregated across the group. It is understood that Government guidance will address how different corporate structures should meet their GPG reporting obligations.

A separate but similar regime will apply to public sector employers.

Who is an employee?

A 'relevant' employee is an individual who works under a contract of employment, apprenticeship or a contract personally to do work. This is a broad definition and captures 'workers' and potentially self employed contractors. Employees based outside the UK would appear to be caught.

LLP partners have been expressly excluded from the definition of employee and do not count towards the 250 employee trigger threshold. LLP's who employ more than 250 relevant employees will be caught by the new regime but they will not have to publish gender pay gap data about the LLP partners.

What pay data is covered?

Employers will be required to take an annual snapshot of pay data on 5 April with the first snapshot date being 5 April 2017. The Employer will then be required to analyse and publish its GPG Report any time within 12-months of the snapshot date. Employers will therefore be able to analyse and publish their data at the most convenient time for them during the year. The first report will have to be produced on/before 4 April 2018.

'Ordinary Pay' includes: basic pay, pay for leave, allowances and shift premium pay. It does not include overtime pay, pay in lieu of leave, benefits in kind or redundancy pay.

The Government has acknowledged the potential for a misleading GPG picture if the pay data of employees who are being paid at a reduced or nil rate during the reference period (e.g. employees on shared parental leave) were to be included in the GPG

Report. Therefore, the pay data of such employees does not now have to be included in the GPG Report.

The GPG Report will have to include both the mean and the median gender pay gap figures. To generate an average earnings figure for these purposes, the employer will have to calculate an hourly pay rate for each relevant employee according to the formula in the regulations.

In order to provide a sufficient level of granularity to explain pay differences within their organisation, employers will also be required to report on the number of men and women working in each quartile of pay distribution.

Employers will also be required to publish the difference between the mean and median bonus pay of women and men in the 12-month period, together with the proportion of male and female employees receiving bonuses.

Bonus pay for these purposes is any remuneration in the form of: money, vouchers, securities, securities options or interests in securities and relates to profit sharing, productivity, performance, incentive or commission.

Narrative

Employers can provide additional narrative alongside their GPG Report to provide context, to explain for example any pay gaps and what actions will be taken and/or details of any initiatives they have taken to recruit more women or improve their female talent pipeline. Such narratives are purely voluntary, but may be advisable from an internal and external PR perspective.

Where does the data have to be published?

An in-scope employer will be required to:

- publish its GPG Report in English

on a searchable UK website that is accessible to its employees and the public;

- retain the GPG information online for a three year period;
- accompany the GPG Report with a written statement signed by the senior responsible person (e.g. director, LLP Partner) to confirm that the data being published is accurate; and
- notify Government that they have published their data by linking the details to a Government-sponsored website.

Consequences of non compliance

At the time of its initial consultation, the Government indicated it would produce publically displayed tables by sector of employers' reported pay gaps and would identify and highlight employers publishing particularly full and explanatory information. It also indicated that it may name and shame employers known not to have complied. No further details of these 'carrots' and 'sticks' have, however, been published.

There will be no civil or criminal penalties in the event of non compliance. However, failure to comply with the regulations would be an unlawful act for the purposes of the Equality Act 2010 in relation to which the Equality and Human Rights Commission could, in principle, bring enforcement action.

Guidance

The Government has committed to developing a package of guidance and support for employers in relation to these new reporting requirements. This will be available after Parliament has approved the regulations.

Practical Steps:

Employers should give some thought to:

- Who will sign off the GPG Report?
- What accompanying narrative will be provided?
- Whether gaps will be explained?
- Whether an explanation of proposed steps to reduce the gap will be included?
- What publication date between 5 April 2017 and 4 April 2018 will best suit business needs e.g. the publication date could coincide with the launch of a new diversity initiative.
- Whether employees will be notified separately of the GPG Report's data or simply left to find it for themselves.
- The need for training and/or briefing of HR and line managers to address any questions or grievances about perceived equal pay claims?
- Whether any internal procedures need to be modified to prevent material being created that will be disclosable and/or prejudicial in relation to or in response to either subject access requests or as part of a disclosure exercise in the context of equal pay claims.
- Whether internal or external legal advisers should be engaged to carry out a full or limited equal pay audit to determine whether there are any potential gender pay risk areas. Any advice provided should attract the veil of legal advice privilege putting the employer in a position to choose how to address any risks identified provided privilege is not waived.

[\[Draft Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017\]](#)

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